

EXHIBIT 5



U.S. Environmental Protection Agency

Pesticides: Endangered Species Protection Program

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Court Ordered Buffers Around Pacific Salmon-Supporting Waters

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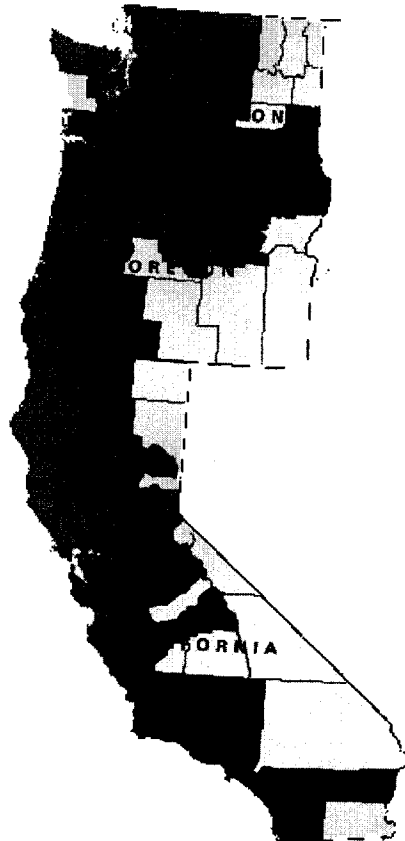
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Shaded Counties on the map below, are those that support threatened and endangered salmon or steelhead habitat, and in which pesticide use buffers may have been ordered by the court. If you plan to use any of the pesticides subject to the court order in a shaded county **YOU SHOULD FIRST READ THE BACKGROUND** section. Pesticide users are urged to check this site, before, but close to the time of application of the pesticide, since the buffers may become unnecessary as EPA continues its review of the pesticides subject to the court order.

Quick Resources

- [Court Ordered Limitations](#)
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BACKGROUND

A citizen suit was filed under the Endangered Species Act against EPA by a group of environmental organizations (Washington Toxics Coalition, et al. v. EPA). In response, the United States District Court for the Western District of Washington issued on January 22, 2004, an order that establishes pesticide buffer zones. Buffer zones are areas adjacent to certain streams, rivers, lakes estuaries and other water bodies, in which the court is ordering certain pesticides not be used. Generally, the buffers established by the Court are 20 yards for ground application and 100 yards for aerial application, adjacent to certain "salmon-supporting waters" in Washington, Oregon and California. The order applies to pesticide use in these three states, for any product containing one or more of the pesticides subject to the court order.

The Court Order which became effective on February 5, 2004, defines salmon-supporting waters as certain water bodies below the "normal high water mark" and thus, any buffer should be measured from that normal high water mark. The buffers apply to the waters indicated on our interactive mapper, and to estuaries relevant to each of the salmon and

steelhead. An estuary is a water passage where a tide meets a river current.

Failure to comply with the court order is not a violation of the Federal Insecticide and Fungicide Act (FIFRA). [EXIT disclaimer >](#) However, EPA recognizes the legal effect of the Court's order and is providing the information on this Web site and linked sites, to assist pesticide users in understanding the specific provisions of the Court's order.

There are several general exceptions to the buffers in the court order and many pesticide specific variations. You should read the general exceptions to determine if any buffers apply to your use of the pesticides subject to the order.

If the general exceptions do not apply to you, consult our interactive map to determine whether a specific buffer applies to your use of a pesticide, and the waters to which that buffer applies.

Enter our interactive map site to determine how the Court's order applies to a pesticide use you intend to make.

GENERAL EXCEPTIONS

Below are descriptions of specific uses for which there is no buffer for any of the pesticides subject to the court order, and uses where only a one yard buffer applies for any of the pesticides subject to the court order. Also below are specific exceptions that apply to Noxious Weed Control Programs, and Programs Authorized by the National Marine Fisheries Service.

USES FOR WHICH THERE IS NO BUFFER

No buffers apply for the following uses of any of the pesticides subject to the order:

- Use in a public health vector control program administered by a public entity
- Use to manufacture an end-use pesticide product
- Use in flea or tick collars for dogs or cats
- Indoor uses
- Use by tree injection
- Homeowner applications to household potted plants

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USES FOR WHICH THERE IS A ONE YARD BUFFER

A one yard buffer applies for the following uses of any of the pesticides subject to the order:

- Localized spot treatments using hand-held, ready-to-use devices, as long as the area treated is limited to 10 percent of the treated right-of-way, roadside, pasture, lawn or forestry site
- insect bait stations
- spot treatments of wasp and hornet nests, as long as the area treated is limited to 10 percent of the treated right-of-way, roadside, pasture, lawn or forestry site
- individual tree removal using cut stump applications
- basal bark applications to individual plants

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NOXIOUS WEED CONTROL PROGRAMS

Buffers for use of the pesticides for noxious weed control are the same as those indicated for your use area and the specific active ingredient, on the interactive map with the following exceptions:

- A. Application of a pesticide registered for aquatic use, and used to control state-

designated noxious weeds as part of a program administered by a public entity, does not require any buffer if:

- o The application is overseen by a Certified Applicator AND
- o Precipitation is not occurring or forecast to occur within 24 hours.
- o If using 2,4-D or Triclopyr, only the amine formulations are used.

B. Application of a pesticide which is not registered for aquatic use, but used to control state-designated noxious weeds as part of a program administered by a public entity, requires only a 15 foot buffer if:

- o The application if overseen by a Certified Applicator AND
- o Precipitation is not occurring or forecast to occur within 24 hours, AND
- o Winds are not greater than 5 mph AND
- o If using 2,4-D or Triclopyr, only the amine formulations are used.

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PROGRAMS AUTHORIZED BY THE NATIONAL MARINE FISHERIES SERVICE (NMFS)

Use of a pesticide undertaken as part of a specific agency action (other than EPA's authorization of a pesticide use under FIFRA) as authorized by:

- a. a no-jeopardy biological opinion issued by NMFS that addresses the pesticide's use and effects on a salmon Evolutionarily Significant Unit (ESU), and an incidental take statement issued by NMFS under the Endangered Species Act (ESA) Section 7(a)(2) that authorizes the take of listed salmon or steelhead;
- b. a written concurrence by NMFS in a "not likely to adversely affect" determination issued under ESA Section 7(a)(2) that addresses the pesticide's use and effects on a salmon ESU;
- c. an incidental take permit issued by NMFS under ESA Section 10(a) that authorizes the take of listed salmon or steelhead from application or use of the pesticide; or
- d. a limit on the take prohibition of ESA Section 9 with respect to a specific use of a pesticide promulgated by NMFS pursuant to ESA Section 4(d) and incorporated into the salmon 4(d) rule codified at 50 CFR § 223.203.

PESTICIDES SUBJECT TO THE COURT ORDER

If you are planning to use a pesticide in one of the counties shaded in green on the map above, and that pesticide contains one or more of the active ingredients listed below, there may be court ordered buffers that apply to your use of the pesticide. You are encouraged to review the BACKGROUND section above to determine the general exceptions and then to use the interactive map to determine specific buffers the court has ordered and the waters to which those buffers apply. You are encouraged to check this site, before, but close to the time of pesticide application, since the information may change as EPA continues to review the pesticides and certain buffers may no longer be necessary.

1,3-dichloropropene
 2,4-D
 azinphos-methyl
 bensulide
 bromoxynil
 captan
 carbaryl
 carbofuran
 chlorothalonil
 chlorpyrifos

dimethoate
 disulfoton
 diuron - crop
 diuron - non-crop
 ethoprop
 fenamiphos
 fenbutatin oxide
 lindane
 malathion
 methidathion

metolachlor
 metribuzin
 naled
 oxyflourfen
 pendimethalin
 phorate
 prometryn
 propargite
 tebuthiuron
 triclopyr BEE

coumaphos
diazinon
diflubenzuron

methomyl
methyl parathion

trifluralin

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URL: <http://www.epa.gov/espp/wtc/maps.htm>